

CHAPTER 150 — S.F.No. 1049

An act relating to human services; refining the vulnerable adults reporting act; clarifying definitions; requiring reporting of financial exploitation; providing for local welfare agency actions to protect vulnerable adults; amending Minnesota Statutes 1984, section 626.557, subdivisions 2, 3a, 5, 9, and 10, and by adding a subdivision.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1984, section 626.557, subdivision 2, is amended to read:

Subd. 2. **DEFINITIONS.** As used in this section, the following terms have the meanings given them unless the specific context indicates otherwise.

(a) "Facility" means a hospital or other entity required to be licensed pursuant to sections 144.50 to 144.58; a nursing home required to be licensed to serve adults pursuant to section 144A.02; an agency, day care facility, or residential facility required to be licensed to serve adults pursuant to sections 245.781 to 245.812; a ~~mental health program receiving funds pursuant to section 245.61;~~ or a home health agency certified for participation in Titles XVIII or XIX of the Social Security Act, United States Code, title 42, sections 1395 et seq.

(b) "Vulnerable adult" means any person 18 years of age or older:

(1) who is a resident or inpatient of a facility;

(2) who receives services at or from a facility required to be licensed to serve adults pursuant to sections 245.781 to 245.812, except a person receiving outpatient services for treatment of chemical dependency or mental illness;

(3) who receives services from a home health agency certified for participation under Titles XVIII or XIX of the Social Security Act, United States Code, title 42, sections 1395 et seq and 1396 et seq; or

(4) who, regardless of residence or type of service received, is unable or unlikely to report abuse or neglect without assistance because of impairment of mental or physical function or emotional status.

(c) "Caretaker" means an individual or facility who has responsibility for the care of a vulnerable adult as a result of a family relationship, or who has assumed responsibility for all or a portion of the care of a vulnerable adult voluntarily, ~~or~~ by contract, or by agreement.

(d) "Abuse" means:

(1) any act which constitutes a violation under sections 609.221 to 609.223, 609.23 to 609.235, 609.322, 609.342, 609.343, 609.344, or 609.345; ~~or~~

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(2) The intentional and nontherapeutic infliction of physical pain or injury, or any persistent course of conduct intended to produce mental or emotional distress nontherapeutic conduct which produces or could reasonably be expected to produce pain or injury and is not accidental, or any repeated conduct which produces or could reasonably be expected to produce mental or emotional distress;

(3) any sexual contact between a facility staff person and a resident or client of that facility; or

(4) the illegal use of a vulnerable adult's person or property for another person's profit or advantage, or the breach of a fiduciary relationship through the use of a person or a person's property for any purpose not in the proper and lawful execution of a trust, including but not limited to situations where a person obtains money, property, or services from a vulnerable adult through the use of undue influence, harassment, duress, deception, or fraud.

(e) "Neglect" means:

(1) failure by a caretaker to supply ~~the~~ a vulnerable adult with necessary food, clothing, shelter, health care or supervision; ~~or~~

(2) the absence or likelihood of absence of necessary food, clothing, shelter, health care, or supervision for a vulnerable adult; or

(3) the absence or likelihood of absence of necessary financial management to protect a vulnerable adult against abuse as defined in paragraph (d), clause (4). Nothing in this section shall be construed to require a health care facility to provide financial management or supervise financial management for a vulnerable adult except as otherwise required by law.

(f) "Report" means any report received by ~~the~~ a local welfare agency, police department, county sheriff, or licensing agency pursuant to this section.

(g) "Licensing agency" means:

(1) the commissioner of health, for facilities as defined in clause (a) which are required to be licensed or certified by the department of health;

(2) the commissioner of human services, for facilities required by sections 245.781 to 245.813 to be licensed;

(3) any licensing board which regulates persons pursuant to section 214.01, subdivision 2; and

(4) any agency responsible for credentialing human services occupations.

Sec. 2. Minnesota Statutes 1984, section 626.557, subdivision 3a, is amended to read:

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Subd. 3a. **REPORT NOT REQUIRED.** (a) Where federal law specifically prohibits a person from disclosing patient identifying information in connection with a report of suspected abuse or neglect under Laws 1983, chapter 273, section 3, that person need not make a required report unless the vulnerable adult, or ~~his~~ the vulnerable adult's guardian, conservator, or legal representative, has consented to disclosure in a manner which conforms to federal requirements. Facilities whose patients or residents are covered by such a federal law shall seek consent to the disclosure of suspected abuse or neglect from each patient or resident, or his guardian, conservator, or legal representative, upon his admission to the facility. Persons who are prohibited by federal law from reporting an incident of suspected abuse or neglect shall promptly seek consent to make a report.

(b) Except as defined in subdivision 2, paragraph (d), clause (1), verbal or physical aggression occurring between patients, residents, or clients of a facility, or self-abusive behavior of these persons does not constitute "abuse" for the purposes of subdivision 3 unless it causes serious harm. The operator of the facility or a designee shall record incidents of aggression and self-abusive behavior in a manner that facilitates periodic review by licensing agencies and county and local welfare agencies.

(c) Nothing in this section shall be construed to require a report of abuse, as defined in subdivision 2, paragraph (d), clause (4), solely on the basis of the transfer of money or property by gift or as compensation for services rendered.

Sec. 3. Minnesota Statutes 1984, section 626.557, subdivision 5, is amended to read:

Subd. 5. **IMMUNITY FROM LIABILITY.** (a) A person, including a person voluntarily making reports and a person required to make reports voluntary or mandated report under subdivision 3, or participating in good faith in making a report pursuant to an investigation under this section shall have immunity is immune from any civil or criminal liability that otherwise might result from making the report person's actions, if the person is acting in good faith.

(b) A person employed by a local welfare agency or a state licensing agency who is conducting or supervising an investigation or enforcing the law in compliance with subdivisions 10, 11, or 12 or any related rule or provision of law is immune from any civil or criminal liability that might otherwise result from the person's actions, if the person is acting in good faith and exercising due care.

Sec. 4. Minnesota Statutes 1984, section 626.557, subdivision 9, is amended to read:

Subd. 9. **MANDATORY REPORTING TO A MEDICAL EXAMINER OR CORONER.** ~~When~~ A person required to report under the provisions of subdivision 3 who has reasonable cause to believe that a vulnerable adult has died

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as a direct or indirect result of abuse or neglect, he shall report that information to the appropriate medical examiner or coroner in addition to the local welfare agency, police department, or county sheriff or appropriate licensing agency or agencies. The medical examiner or coroner shall complete an investigation as soon as feasible and report the findings to the police department or county sheriff, and the local welfare agency, and, if applicable, each licensing agency.

Sec. 5. Minnesota Statutes 1984, section 626.557, subdivision 10, is amended to read:

Subd. 10. **DUTIES OF LOCAL WELFARE AGENCY UPON A RECEIPT OF A REPORT.** (a) The local welfare agency shall immediately investigate and offer emergency and continuing protective social services for purposes of preventing further abuse or neglect and for safeguarding and enhancing the welfare of the abused or neglected vulnerable adult. Local welfare agencies may enter facilities and inspect and copy records as part of investigations. In cases of suspected sexual abuse, the local welfare agency shall immediately arrange for and make available to the victim appropriate medical examination and treatment. The investigation shall not be limited to the written records of the facility, but shall include every other available source of information. When necessary in order to protect the vulnerable adult from further harm, the local welfare agency shall seek authority to remove the vulnerable adult from the situation in which the neglect or abuse occurred. The local welfare agency shall also investigate to determine whether the conditions which resulted in the reported abuse or neglect place other vulnerable adults in jeopardy of being abused or neglected and offer protective social services that are called for by its determination. In performing any of these duties, the local welfare agency shall maintain appropriate records.

(b) If the report indicates, or if the local welfare agency finds that the suspected abuse or neglect occurred at a facility, or while the vulnerable adult was or should have been under the care of or receiving services from a facility, or that the suspected abuse or neglect involved a person licensed by a licensing agency to provide care or services, the local welfare agency shall immediately notify the each appropriate licensing agency or agencies, and provide the each licensing agency with a copy of the report and of its investigative findings.

(c) When necessary in order to protect a vulnerable adult from serious harm, the local agency shall immediately intervene on behalf of that adult to help the family, victim, or other interested person by seeking any of the following:

(1) a restraining order or a court order for removal of the perpetrator from the residence of the vulnerable adult pursuant to section 518B.01;

(2) the appointment of a guardian or conservator pursuant to sections 525.539 to 525.6198, or guardianship or conservatorship pursuant to chapter 252A;

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(3) replacement of an abusive or neglectful guardian or conservator and appointment of a suitable person as guardian or conservator, pursuant to sections 525.539 to 525.6198; or

(4) a referral to the prosecuting attorney for possible criminal prosecution of the perpetrator under chapter 609.

The expenses of legal intervention must be paid by the county in the case of indigent persons, under section 525.703 and chapter 563.

In proceedings under sections 525.539 to 525.6198, if a suitable relative or other person is not available to petition for guardianship or conservatorship, a county employee shall present the petition with representation by the county attorney. The county shall contract with or arrange for a suitable person or nonprofit organization to provide ongoing guardianship services. If the county presents evidence to the probate court that it has made a diligent effort and no other suitable person can be found, a county employee may serve as guardian or conservator. The county shall not retaliate against the employee for any action taken on behalf of the ward or conservatee even if the action is adverse to the county's interest. Any person retaliated against in violation of this subdivision shall have a cause of action against the county and shall be entitled to reasonable attorney fees and costs of the action if the action is upheld by the court.

Sec. 6. Minnesota Statutes 1984, section 626.557, is amended by adding a subdivision to read:

Subd. 11a. DUTIES OF PROSECUTING AUTHORITIES. Upon receipt of a report from a social service or licensing agency, the prosecuting authority shall immediately investigate, prosecute when warranted, and transmit its findings and disposition to the referring agency.

Approved May 20, 1985

CHAPTER 151 — S.F.No. 1077

An act relating to courts; providing for reimbursement of residents required to testify in another state in criminal cases; amending Minnesota Statutes 1984, section 634.06.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1984, section 634.06, is amended to read:

634.06 RESIDENTS REQUIRED TO TESTIFY IN ANOTHER STATE.

If (a) Upon presentation of a certificate from a judge of a court of record in any state which by its laws has made provision for commanding that may require persons within that state to attend and testify in criminal actions or grand jury investigations in this state certifies under the seal of such court stating that

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